

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:99-CR-62-GCM**

**KISER M. KIRBY,
Petitioner,**

v.

**UNITED STATES OF AMERICA,
Respondent.**

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ORDER

THIS MATTER is before the Court upon the Defendant's Motion for Sentence Reduction. (Doc. 48). Pursuant to USSG §5G1.1, the sentence imposed may not be less than the statutorily required minimum sentence. The original total offense level in this case was a 46; however, pursuant to Application Note 2 of Chapter 5, Part A, of the Sentencing Guidelines, an offense level of more than 43 is to be treated as an offense level of 43. Therefore, the total offense level was reflected as a 43 in the Presentence Report. After applying Amendment 706 (Crack Cocaine Amendment) and reducing the sentence by two levels (from a 46), the revised total offense level is a 44, which results in a total offense level of 43, and thus, no change in the guideline range of Life. Therefore, Amendment 706 has no effect on the Defendant's sentence.

Accordingly, Defendant's Motion is DENIED.

Signed: February 16, 2010



Graham C. Mullen
United States District Judge

